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Summary record of the 2426th meeting
Held at Headquarters, New York, on Tuesday, 13 March 2007, at 10 a.m.

Chairperson: Mr. Rivas Posada

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The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant and of country situations (*continued*)

Third periodic report of Madagascar (*continued*) (CCPR/C/MDG/2005/3; CCPR/C/MDG/Q/3)

1. *At the invitation of the Chairperson, the members of the delegation of Madagascar resumed places at the Committee table.*

2. **The Chairperson** invited the delegation of Madagascar to continue its replies to points raised in connection with questions 1-12 on the list of issues (CCPR/C/MDG/Q/3).

3. **Ms. Ratsiharovala** (Madagascar) said that the issue of unionization of workers in the free trade zones was being reviewed by the National Labour Board, which included representatives of workers, employers and the State. Measures had been adopted to reinforce inspection of workplaces, register workers and encourage the signing of collective agreements, including in the free trade zones. Works' councils had been established to deal with issues relating to working conditions, and workers in the free trade zones had the right to choose any union, not only the official union, to represent them.

4. She said polygamy was very rare, and limited to barely 1.6 per cent of the population, a rate that was declining. Steps taken to eliminate polygamy included educating women about their rights and increasing awareness of the need to eliminate that practice within the communities where it was most common.

5. Human rights training was provided by the Ministry of Justice to the military, the police, prison staff and the judiciary through institutions such as the military academy and the National School of the Judiciary and Court Officers. Manuals relating to international human rights standards were available in the national language. Efforts were under way to re-establish the National Commission for Human Rights; a meeting with a representative of the Office of the United Nations High Commissioner for Human Rights (OHCHR) had been held in 2006 for that purpose. There was no specific mechanism to monitor human rights during emergency situations, although victims of any alleged violation could file a complaint with the administrative court.

6. She acknowledged that trafficking in children had been a problem but stressed that Madagascar was a party to the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. A seminar on that question had been organized in 2006 in cooperation with the United Nations Office on Drugs and Crime (UNODC), and the issue would be addressed in the reform of the Criminal Code. There was a new law regulating adoption and, with a view to putting an end to abuses, international adoption had been suspended, the institutions involved had had their licences revoked and further legislation was envisaged. In order to eliminate the enslavement of children, a national plan to abolish child labour had been adopted and 12 June of every year would be celebrated as the World Day against Child Labour. A national committee had been established, made up of representatives of ministries, civil society and NGOs, to monitor the situation and promote employment and revenue-generating activities for parents, including micro-credit schemes, so they would not have to sell their children into slavery.

7. With regard to the use of prisoners to perform work outside prison, she said such labour was voluntary and remunerated and restricted to contracts between the prison administration and the employer for work of a public service nature. Work to benefit individuals was prohibited.

8. The rate of use of contraceptives had increased from 5 per cent of the population in 1992 to 18 per cent in 2003-2004. In the Madagascar Action Plan (MAP) 2007-2012, the target rate for 2012 was set at 30 per cent. Under a pilot project conducted in 2005, the Ministry of Health had distributed contraceptives in seven districts, resulting in a fivefold increase in their use over three months; as a result, that programme would be extended throughout the country.

9. Pursuant to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, a draft text was being prepared which would criminalize torture. A draft law on pretrial detention had been approved by the Council of Ministers and would be submitted to Parliament for adoption at its next session. Under that draft, individuals could no longer be held in pretrial detention indefinitely. As for allegations of corruption, she said some State agents, including senior civil servants and project leaders, had been prosecuted and

found guilty of corruption. With regard to the issue of kidnapping, she observed that members of the Indo-Pakistani community were the victims of abductions.

10. A code of conduct for judges, based on the Bangalore Principles of Judicial Conduct, had been drafted in 2005, and the Ministry of Justice and the National School of the Judiciary and Court Officers had organized seminars on the question of ethical conduct in 2006 which had been attended by all judges, as well as by the Minister of Justice himself. Furthermore, it would henceforth be the responsibility of the Supreme Council of the Judiciary, not the Executive, to take decisions regarding the careers of judges and to supervise the profession.

11. **Ms. Chanet** reiterated her concern about allegations of summary executions by the authorities. She also continued to be alarmed at the situation of twin children, who, although no longer killed, were nevertheless often abandoned, violating their right to a normal life. She wondered what the State party was doing to remedy those situations.

12. **Mr. Lallah** requested more information on the functioning of the *Dina* courts, their membership and any safeguards that existed to ensure they acted fairly and impartially. He cautioned against the danger of a State allowing custom and tradition to circumvent the provisions of the Covenant while simply introducing palliative measures to correct the worst abuses of such systems. Whenever traditional practices were in conflict with the Covenant it was the Covenant that must prevail; in that regard, he referred the State party to the Committee's general comments and jurisprudence.

13. **Mr. Amor** welcomed the strengthened human rights guarantees contained in the new draft Constitution. With regard to the right to protection of health from the time of conception, however, he wondered whether abortion rights would be protected. He expressed concern that the requirement to respect cultural values pursuant to article 39 could lead to the persistence of abuses such as the ill-treatment of twins. He also assumed, with reference to the draft Constitution, that there would be no problem relating to the implementation of multilateral treaties, especially those linked to the Covenant.

14. **Mr. O'Flaherty** asked if resources to continue human rights awareness programmes and embed them in State institutions over the long term would be available once partnerships with United Nations mechanisms came to an end. He stressed the urgency of creating a time frame for the re-establishment of the National Commission for Human Rights and a mechanism other than the administrative court to ensure there were adequate safeguards for the protection of human rights during emergency situations, and requested information on steps taken by the State party to implement article 4 of the Covenant. In that same vein, although he welcomed the organization of workshops relating to the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, he underscored the need to strike a balance between the suppression and punishment of such practices and the protection of human rights.

15. **Ms. Wedgwood** enquired whether appeals against *Dina* decisions could be based on both the facts and the law, who or what body would hear such appeals, whether any form of legal aid was available for the purpose and what punishment had been handed out to village chiefs who, whether through the *Dina* or previous village mechanisms, had ordered summary executions.

16. **The Chairperson** invited the delegation of Madagascar to address questions 13-24 on the list of issues.

17. **Mr. Rakotoniaina** (Madagascar), referring to question 13, said that in order to reduce the number of persons in pretrial detention, the number of criminal court sessions had been increased from 2 to 20, with 595 criminal cases having been reviewed in 2006 in one court alone. To reduce overcrowding, four new prisons had been opened and two had been enlarged; furthermore, alternative sentences to incarceration were being implemented. The number of inmate deaths had fallen from 328 in 2005 to 83 in 2006. Efforts were under way to separate remand and convicted prisoners, women and children. Finally, 900 million Malagasy ariary (MGA) had been allocated to improve the quality of meals in the prisons.

18. With regard to imprisonment for civil debts (question 14), he said the police and prosecutors had been made aware of the importance of distinguishing between civil and criminal offences. An individual could in fact no longer be imprisoned for a civil debt.

19. Turning to questions 15-17, he said his Government was aware of the need to address the

understaffing of the judicial system and in 2006 had doubled from 25 to 50 and from 50 to 100 the number of student judges and court officers respectively admitted to the National School of the Judiciary and Court Officers. A specialized institute for the training of lawyers had also been established and the right to representation by a lawyer had been affirmed. Legal aid was available and was free of charge for cases involving labour issues as well as for cases carrying a penalty of more than 5 years' imprisonment.

20. The independence of the judiciary was guaranteed by Ordinance No. 2005-005 on the organization of the judiciary, and judges were free to interpret the law in reaching their decisions. Any judicial misconduct would be reviewed by the Supreme Council of the Judiciary, which could punish an offending judge, inter alia by removing him from the bench.

21. Regarding question 18, he said freedom of religion was guaranteed pursuant to article 10 of the Constitution. Concerning questions 19-21, he said one television and 7 radio stations had been closed by the Government for technical violations since 2002, and, in 2002, two radio stations had been attacked in the post-election period. There had been no arrests for expressing political opinions. Political meetings had to be authorized, but only for security reasons: they had to be held in an enclosed location and there had to be guarantees for the safety of participants and third parties. That could not be considered an act of discrimination against political parties, all of which had to meet the same criteria. All types of organizations, be they non-profit, cultural or political or private sector, or civil service unions, were allowed and regulated by the law.

22. In response to question 22, he said that all registered voters and electoral candidates were entitled to appeal to the Constitutional High Court in disputes involving elections. With regard to question 23, there were no ethnic minorities as such in Madagascar, although there were a number of minority linguistic groups. The latter were free to use their native languages and abide by their own customs provided that they did not conflict with domestic legislation. Lastly, referring to question 24, he said that handbooks containing information about the Covenant and the Optional Protocol had been published and distributed to the general population as well as to members of the judiciary. Those handbooks contained detailed illustrations, thereby ensuring that they would be understood by the illiterate. In addition, the Government had introduced a series of training courses, based on case studies, designed to prevent future human rights violations.

23. **Mr. Amor** welcomed the proposals designed to improve prison conditions. However, he was concerned that article 408, paragraph 2, of the Criminal Code, pursuant to which imprisonment for civil debt was permissible in the event of a bad faith refusal to carry out contractual obligations, was incompatible with article 11 of the Covenant. In that connection, and for the purposes of clarification, he requested a copy of that provision.

24. Referring to article 18 of the Covenant, he commended the State party for its religious diversity but expressed concern about possible restrictions on religious freedom. In particular, he wished to know whether certain churches had been used for political ends during the 2001 and 2002 elections and whether it was true that one of those churches had subsequently been dissolved. He also enquired about the prevalence of religious sects in Madagascar.

25. As far as political rights (article 25 of the Covenant) were concerned, the National Electoral Council was empowered to refer complaints concerning elections to the courts. If the Council failed to refer a particular complaint, was it possible to appeal against its decision?

26. Lastly, according to the relevant core document (HRI/CORE/1/Add.31/Rev.1), there were 18 main ethnic groups in Madagascar. He wondered whether friction existed between national interests and the interests of ethnic minorities and whether specific provision had been made to protect the rights of the latter.

27. **Mr. Glèlè-Ahanhanzo** pointed out that imprisonment for civil debt was a widespread phenomenon in black Africa. While he welcomed the steps taken to incorporate the prohibition of imprisonment for civil debt into domestic legislation, he would be grateful for more detailed information, including statistics where available, on the de facto effects of that legislation.

28. **Ms. Palm** welcomed the steps taken to deal with child labour, but enquired whether any specific measures had been adopted to punish employers.

29. Referring to article 14 of the Covenant (right to a fair trial), she urged the State party to address the concerns expressed about *Dina* decisions. The efforts undertaken to strengthen the judicial system were commendable, but enacting new legislation was only the first step in a much longer process. Information about legal aid arrangements was not widely available, and she wished to know whether suspects eligible for legal aid had access to competent lawyers at all stages of the proceedings. She was also concerned about the apparent loss of case files and the resulting extension of suspects' detention periods. Although that situation could be attributable in part to the shortage of judges, she wondered whether the State party had an adequate system for registering files.

30. Lastly, she asked for information on existing measures to safeguard the independence of the judiciary. In particular, she wished to know how judges were appointed, how much they earned and whether they could be removed from office. She enquired as to the arrangements for taking disciplinary action against judges and about the role and responsibilities of the Supreme Council of the Judiciary.

31. **Mr. Lallah**, referring to paragraphs 6-9 of the core document, expressed concern at the apparent distinction between ethnic groups sharing the same language (Malagasy) and members of foreign communities. He wished to know whether the latter were citizens of Madagascar. If so, could the fact that they were still regarded as foreigners undermine their status as Malagasy nationals?

32. He commended the State party for its efforts to provide training courses on the Covenant and the Optional Protocol for State employees, but, given the important role played by customary courts in rural areas, expressed surprise at the apparent lack of courses geared towards the members of those courts. The Government should seek a practical solution to that problem.

33. **Mr. Bhagwati** requested additional information about the management and activities of the National School of the Judiciary and Court Officers. He wished to know whether the School was run by members of the judiciary and whether the courses it offered were compulsory for all judges. He also enquired whether judges could avail themselves of periodic refresher training.

34. The State party should indicate the composition of the Council of State and the categories of appeal it considered. He asked whether Madagascar had a final court of appeal and, if so, what was the scope of its jurisdiction. Did domestic legislation provide explicitly for legal aid, or was such aid supplied at the discretion of the Bar? He requested clarification of the role of the African Development Bank in that regard.

35. A number of bodies had been established to ensure the enforcement of the law against corruption, adopted in 2004. He would be grateful for detailed information on the specific activities carried out by those bodies and on the number of individual cases brought before the courts.

36. **Ms. Majodina**, referring to article 13 of the Covenant on the expulsion of aliens, asked whether the Malagasy authorities had established procedures for the determination of refugee status and whether asylum-seekers awaiting such determination were placed in detention centres. She also enquired as to the measures in place to ensure that asylum-seekers who were not granted refugee status were repatriated in a dignified manner.

37. The independence of the now defunct National Commission for Human Rights had been compromised by the participation of members of the executive branch. The State party should therefore describe the steps taken to guarantee the independence of the proposed new Commission, in accordance with the Paris Principles. In closing, she pointed out that OHCHR offered technical assistance to countries wishing to establish independent human rights monitoring bodies.

38. **Mr. Glèlè-Ahanhanzo**, referring to paragraph 73 of the State party's written responses, said that it was inhumane to postpone an application for judicial review for 30 years while maintaining the prisoner concerned in detention. He urged the Government of Madagascar to settle Mr. Rakotonirina's case as soon as possible.

The meeting was suspended at 11.30 a.m. and resumed at 11.55 a.m.

39. **Mr. Rakotoniaina** (Madagascar) said that article 408, paragraph 2, of the Criminal Code should be understood as applying to debtors who refused to pay back advances received or to fulfil contractual obligations. A study performed by United Nations

experts on the interpretation and application of the article had in fact concluded that, as stated in paragraph 227 of Madagascar's third periodic report, the article was not incompatible with the Covenant, citing an example in which a supplier failed to provide medicines or food to a hospital for refugee children, which constituted a criminal offence.

40. Further to the request for additional information on the National School of the Judiciary and Court Officers, he said that the School was State-run and must be attended by anyone wishing to become a judge; admission was by competitive examination and students could specialize in judicial, administrative or financial matters. Both initial and continuing education were provided, the former involving theory-based learning and practical internships, and the latter focusing on specific topics according to the current capacity-building needs of the judiciary.

41. **Mr. Andriamihanta** (Madagascar), referring to the question of freedom of religion, said that a church wishing to establish itself in Madagascar was required to undergo a legal process in order to be recognized by the State. Regarding closure of churches, he said there had been a case in which one church had attempted to appropriate the property of another church, from which it had originally split. The Government had shut down the church in order to prevent disturbance of public order; the church had since instituted legal proceedings with the administrative court to reverse the decision. With reference to sects, a Brazilian church, which had not completed the legal process necessary for recognition by the State of Madagascar, had burned the Bible, thereby breaking the law by showing disrespect for the freedom of religion of members of the Catholic Church. Furthermore, because the Catholic Church had a particularly strong following in the area concerned, the act could have disturbed public order. The sect's activities had been banned and its leaders, all Brazilian, had been deported.

42. On the independence of judges, he said that Madagascar had a continental legal system, under which judges became civil servants following graduation from the National School of the Judiciary and Court Officers, rather than being elected or nominated; when they retired, they ceased to be part of the judiciary. Finally, the emoluments for judges were standard for Madagascar.

43. **Mr. Andrianarimanana** (Madagascar) said that, for geographical and economic reasons, Madagascar was not a destination for refugees, but rather a transit country. While in Madagascar, refugees were under the care of the United Nations, which was responsible for reviewing their files in accordance with the Geneva Conventions, and their rights were respected by the Government. He noted that no refugees had ever been repatriated from Madagascar, as a transit country.

44. He explained that paragraph 451 of the report referred to the fact that, in Madagascar, there were no ethnic minorities as defined by the Covenant. All members of the Malagasy population had the same culture and language, due to multicultural training. Therefore, ethnic communities did not really exist in Madagascar. Furthermore, foreigners could obtain Malagasy nationality, in which case they became full-fledged citizens; however, there were not enough such individuals to constitute a true community.

45. **Ms. Ralaivaoarisoa** (Madagascar), responding to the remarks about prisoners' lost files, acknowledged that there had been problems in the past with the file-keeping system at Antananarivo, but informed the Committee that the system had been computerized for the past five years, thereby preventing a recurrence. Furthermore, the Ministry of Justice had taken disciplinary measures with respect to the loss of a file by the registry of a court in Antananarivo, so as to ensure that more care would be taken in that regard in the future.

46. Referring to the inmate who had been waiting for 30 years for his appeal to be heard, she said that there had recently been a meeting of all the Supreme Court judges to review the situation of such inmates. Following investigation, the judges had concluded that the problem had been due in part to negligence by registries outside the capital. Those files were now all kept at the Supreme Court of Antananarivo and a taskforce had been created to deal with them within a month or two.

47. **Ms. Ratsiharovala** (Madagascar), referring to legal defence, said that all accused persons could engage a lawyer if they were willing to pay for one; in addition, legal aid was made available to accused persons with insufficient means who risked a sentence exceeding five years' imprisonment. At the preliminary investigation stage, accused persons could be assisted by any individual of their choice, with the exception of

a judge, a holder of elective public office or a member of the armed forces.

48. The Supreme Council of the Judiciary was chaired by the President of the Republic, who guaranteed the independence of the judiciary. Officially appointed members of the Council included representatives of the Ministry of Justice, all the chief justices of the Supreme Court and of the appeals courts, and judges elected by their peers. The Council was responsible for the assignment and promotion of members of the judiciary, whereas the assignment of public prosecutors was a matter for the Minister of Justice. The Council also acted as a disciplinary body, deciding the cases of judges brought before the Disciplinary Board. In principle, an investigation unit attached to the Ministry of Justice was responsible for carrying out enquiries before the case was referred to the Council. In addition, the Council could be asked for advice on the appointment of judges, especially chief justices; in that case, the Council proposed three names, and the Ministry chose one from among them. Finally, the Council appointed two members to the Constitutional High Court.

49. Reverting to the issue of lost files, she reiterated that the problem was rarely encountered in Antananarivo, and explained that, outside the capital, it was due mainly to a restructuring of the appeals court machinery. Initially, there had been just one appeals court, but several more had been established beginning in the 1990s and some prisoners' files had been transferred to the wrong court by mistake or, alternatively, had not been transferred when they should have been. Computerization of files had begun in Antananarivo, but was still lacking outside the capital. Regarding delays in processing appeals files, she explained that those files had to be dealt with by the Supreme Court in Antananarivo but that some files in jurisdictions outside the capital had never been received. Steps had been taken recently to eliminate the delays.

50. The anti-corruption law adopted in 2004 provided for the establishment of several bodies, including the High Council to Combat Corruption and the Independent Anti-corruption Office. Moreover, the anti-corruption network based in Antananarivo linked all judicial and administrative authorities handling corruption cases, including the police and the public prosecutor, as well as the courts, and as a result many corruption cases had been dealt with.

51. **Ms. Palm**, clarifying her earlier questions, asked whether there was a limit to the length of time judges could remain in office, or whether they were allowed to continue until retirement. Could they be removed from office and, if so, for what offences and according to what laws?

52. Referring to the question of lost files, she said that while the system had apparently improved, she was concerned about the situation outside Antananarivo, especially with regard to the computerization of files. If the system was unreliable, the current intolerable situation involving misplaced files was sure to continue.

53. While the Supreme Council of the Judiciary was a very important body, she was concerned about the great number of roles it had, as well as its composition, as it was bound to be significantly influenced by its ministerial members. The Council clearly decided some crucial issues involving judges, including their careers and even their appointment. Furthermore, she understood that hearings and decisions on disciplinary matters were secret and that, if found guilty, an individual could be transferred to another court or region; if true, that could have serious implications for the independence of judges. She asked the delegation to provide more information in that regard. She also wondered if judges could be dismissed by the Supreme Council of the Judiciary.

54. **Ms. Wedgwood** said that lost files called the legitimacy of detention into question, since there could be no case if there was no file. She also expressed concern about what appeared to constitute interference in freedom of worship and belief in Madagascar: lack of official recognition of a religion was not a ground for its prohibition.

55. **Mr. Bhagwati** said that he was disturbed about the composition of the Supreme Council of the Judiciary, which could adversely affect the independence of judges. Their fate should not be left in the hands of non-judges, and particularly not of politicians. The question of legal aid was also a cause of concern to the Committee. There should be a body to determine cases where the poverty of litigants justified the granting of such aid, for which funds should be available. Referring to the control exercised by the State party over private radio and television stations, he asked whether its power to close down such stations was a statutory or an executive power. It

would also be useful to know about the functions and composition of the National Labour Board mentioned in paragraph 342 of the periodic report.

56. **Ms. Ratsiharovala** (Madagascar) said that judges did not have a fixed term of office. They were removable, however, and in the course of their careers might serve successively in the judiciary and in the office of the public prosecutor, according to both requirements of the service and their personal convenience. They could be relieved of their duties for improper conduct, in particular corruption. As for the composition of the Supreme Council of the Judiciary, it did not include politicians but consisted of judges and officials from the Ministry of Justice, who were all magistrates entrusted with administrative functions. While it discussed disciplinary matters in non-public meetings, the results of its deliberations were made public, in particular through the press.

57. Turning to the question of detained persons whose files had been lost, she stressed that such persons were indeed released; however, efforts continued to be made to locate their files, sometimes successfully.

58. In response to the concern expressed about the availability of legal aid, she said that over the years such aid had rarely been used because of the strict requirements for determining poverty. The Government was currently seeking to make such aid more accessible by putting legal aid institutions in place; it had already established a number of legal information booths where people could obtain information and advice on legal matters free of charge.

59. **Mr. Andriamihanta** (Madagascar) said that there was full freedom of religion in Madagascar, subject only to respect for the law and tolerance of other religions. The Universal Church of the Kingdom of God had been closed because of its attacks against Catholicism.

60. **The Chairperson** commended the State party for the efforts it had made to improve its human rights legislation, as reflected in the delegation's responses; there still remained some issues which he hoped would be fully covered by additional written information. Community traditions, while perhaps not amounting to a parallel jurisdiction, could run counter to the guarantees enshrined in the Covenant, while the desire to modernize institutions could be frustrated by customs, which therefore needed to be monitored. There should also be possibilities of recourse. The Committee was particularly concerned about the treatment of twins in the country, because of the taboos attaching to them. The custom of abandoning one twin persisted and measures had to be taken to address that anomaly. The Committee would also appreciate fuller information about the various kinds of state of emergency that could be declared, their maximum duration and the legal safeguards that would be available in such a situation, bearing in mind that the provisions of the Covenant could not be suspended. Doubts likewise persisted about the situation of persons under detention. The Committee would like to know what protection was given to such persons when they were made available as forced labour to the private sector and whether the State monitored such practices. Other points to be borne in mind for future reports concerned the rights of minorities, both national and foreign, arbitrary interference with freedom of expression and conscience, and the practical results of reforms for the effective protection of citizens. He stressed that it was important for States parties not only to comply with the provisions of the Covenant but also to submit their periodic reports on time. Between the State party's second and third periodic reports 14 years had elapsed; that was excessive and did not facilitate the Committee's work.

61. **Ms. Ratsiharovala** (Madagascar) thanked the Committee for highlighting in its questions concerns that merited Madagascar's full attention in its efforts to promote and protect the human rights of its citizens and thereby to contribute to its development. Since indeed there could be no genuine development without an improvement in human well-being, respect for human rights was more important than the satisfaction of material needs and accounted, in particular, for the importance given to basic education in Madagascar, which was a prerequisite for the advancement of democracy. Democracy and development were interdependent and for that reason her Government was seeking to promote them hand in hand.

62. As had been apparent from some of the replies to the Committee's questions, further progress had been made in promoting human rights in the country since the writing of the report. Madagascar had acceded to the major international conventions and had strengthened its human rights legislation, notably for the protection of vulnerable persons, such as the disabled and those affected by HIV/AIDS. There had

also been improvements in prison conditions and the rights of detained persons, although the situation still gave cause for concern. The Committee's observations and suggestions would provide her country with valuable guidance and enable it to advance on the right track. In that spirit, her Government would be in favour of setting up permanent mechanisms for monitoring and evaluating democratic practices and the enjoyment of rights and freedoms. She assured the Committee that its observations would not remain a dead letter and that Madagascar's next report would be submitted in good time.

The meeting rose at 1 p.m.